

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRA-S-901-SB-2005  
Date of decision: May 20, 2016.

Narender

... **Appellant**

v.

State of Haryana

... **Respondent**

2. CRA-S-2254-SB-2008

Santu @ Sat Narain

... **Appellant**

v.

State of Haryana

... **Respondent**

CORAM: **HON'BLE MR. JUSTICE A.B. CHAUDHARI**

Present: Shri Rahul Vats, Advocate for the appellants.

Shri Vijesh Sharma, Deputy Advocate General, Haryana.

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *Whether to be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

**A.B. Chaudhari**, J. (Oral):

Being aggrieved by the judgment and order dated 27.4.2005 passed in Sessions Case No.124 of 2003 arising out of FIR No.61 dated 8.5.2003, registered under Sections 392, 398, 395, 120-B IPC and 25 of the Arms Act, Police Station GRP Rohtak, by which the appellants Narender and Sat Narain were convicted for offences under Section 392 and 397 IPC and were sentenced to undergo RI for 7 years with fine of Rs.1,000/- each and RI for 2 years under Section 392 IPC with fine of Rs.500/- each, Crl. Appeal

No.901-SB of 2005 was preferred by Narender and Crl. Appeal No.2254-SB of 2008 was preferred by Sat Narain in this Court.

FACTS:

It is the case of the prosecution that on 7.5.2003, an information was received from DSP Gohana on telephone regarding robbery at Railway Station Gohana. Pursuant thereto, SHO Dinesh Kumar along with police officials went to Railway Station and recorded the statement of Parveen Mittal complainant who stated that he used to supply Niwar in the market at Rohtak. On the fateful evening of 7.5.2003, after collecting money, he reached back to Gohana by train at about 6.40 p.m. He alighted from the train and when he was going to his house near railway phatak, a Splendor motorcycle with two youths, came near him. The person of short stature was driving the motorcycle and other one, who was of good height, was a pillion rider. Both of them stopped near him and on pistol point demanded the money. They took away the money and escaped on the same motorcycle. His statement was recorded and FIR Ex.PA/2 was registered. Investigation commenced. The accused were arrested in some other case and they made disclosure statements and confessed their guilt. Thereafter, the investigation was completed and challan was filed against the appellant-accused persons along with other accused persons, namely, Shiv Kumar, Ajit @ Monu, Sumer and Sunil, who were eventually acquitted. The prosecution examined its witnesses before the court during trial. The court heard the evidence. Thereafter, statements under Section 313

Cr.P.C. were recorded and the appellants Narender and Sat narain were convicted, as stated above. Hence, these appeals.

ARGUMENTS:

In support of these two appeals, learned counsel for the appellants assailing the impugned judgment and order, submitted that the prosecution evidence was wholly untrustworthy, unreliable and was dependent on a single witness, namely, the complainant Parveen Mittal. There was no corroboration to his testimony and, therefore, the trial Judge ought to have thrown out the prosecution case since his evidence was highly doubtful and did not inspire confidence. The counsel for the appellants in these appeals then contended that the alleged recovery was fake and was shown by the police and should not have been believed by the learned trial Judge. Learned Counsel for the appellants, therefore, contended that the conviction is required to be set aside. In the alternative, learned Counsel for the appellants contended that they were also convicted for the offences arising out of FIR No.114 (Sessions Case No.23 of 2004) and were sentenced to undergo RI for 10 years. The sentence of 10 years arising out of FIR No.114 and sentence of 7 years arising out of present FIR No.61 (Sessions Case No.124 of 2003) would make the total of 17 years, which would be harsh and giving no opportunity of reformation. The counsel, therefore, contended that this is a fit case to exercise powers under Section 427 read with Section 482 Cr.P.C. to order the sentence of 7 years imposed in this case to run concurrently with the sentence of 10 years imposed in

the case arising out of FIR No.114.

Per contra, learned Deputy Advocate General appearing for the State of Haryana supported the impugned judgment and order and submitted that the evidence of complainant Parveen Mittal is trustworthy and perusal of the cross examination will show that the same was not at all shaken. He, therefore submitted that the appellants are habitual offenders and have no regard for the rule of law. He opposed the prayer for making the sentences to run concurrently on that ground. Finally, he prayed for dismissal of the appeals.

CONSIDERATION:

I have heard Learned Counsel for the parties at length. I have perused the entire record including the evidence of Parveen Mittal, the star witness of the prosecution. I have also seen the evidence of police witnesses regarding discovery/disclosure etc. Upon perusal of the evidence of Parveen Mittal, I am satisfied that there is no dent made by the defence to his deposition during cross examination. His evidence is wholly trustworthy and reliable. He has clearly identified the persons who have robbed him on the gun point. Instead of discussing the evidence of Parveen Mittal and other police officials, I think it would be appropriate to reproduce the reasons given by the trial Judge in the following paragraphs:-

“17. The second set of accused is comprising namely, Narender and Sat Narain. As per prosecution story two persons came on a motor-cycle and got the complainant stopped at pistol point and they looted the money, i.e.

Rs.40,000/- from him. Thus, in order to prove this fact, the statement of complainant is very material, the prosecution has produced the complainant in the witness-box who has identified both the accused and he also testified that the accused namely, Sat Narain and Narender are the same persons who looted the money of Rs.40,000/- from him on pistol point and further it is also in his statement that both the accused came on the motor-cycle and they escaped from the spot on the same motor-cycle after looting the money and when he tried to catch them, then one of the accused who was pillion rider on the motor-cycle fired upon him but he escaped a bit. Thus, he has given full support to the prosecution case for proving the identity of the accused and fact of looting money of Rs.40,000/- from him by these two accused. The complainant has no personal grouse or interest against any of the accused. So, for proving the case against both these accused, statement of complainant can not be ignored in the eye of law. Thus, case of prosecution has got full support from the testimony of complainant which is direct evidence. Proposition of law is very clear that direct evidence produced by the prosecution can not be ignored until there is any specific or serious allegation against such witness. But there is no such allegation on the part of the accused, as to why the complainant will tell a lie.

18. In this case all the accused have been charge-sheeted for the offence punishable U/s 392 read with section 120 B and 397 read with section 120 B of Indian Penal Code, as already discussed, the prosecution has failed to prove the fact of conspiracy against any of the accused, So, at the time of deciding the case against the accused Narender and Sat Narain, the court is not

supposed to repeat the same. Thus, now the court has to see the offence U/s 392 and 397 of Indian Penal Code independently against accused Narender and Sat Narain. For proving the offence U/s 392, court has to see whether accused have committed theft and at that time both of them attempted to cause death or hurt to the complainant and the accused have acted so voluntarily. As already discussed that it is in the statement of complainant, that both the accused namely, Narender and Sat Narain looted the money of Rs.40,000/- from him on pistol point and at the time of escape, one of the accused fired upon him. Thus, from his deposition, it is clear that the accused have attempted to cause hurt or death of the complainant by showing the fire arm i.e. pistol and they have also acted so voluntarily. Thus, from the deposition of the complainant, it is clear that prosecution has able to prove all the ingredients U/s 392 of Indian Penal Code against both the accused.

19. Further it is to be seen whether both these accused have committed offence U/s 397 IPC. Prosecution has to establish whether the accused have committed robbery or dacoity and at that time whether accused have used deadly weapon or cause grievous hurt or attempted to cause death or grievous hurt and that act has been done during the commission of dacoity or robbery. Dacoity has been defined u/s 391 IPC, according to which five or more than persons jointly committed or attempt to commit robbery, where the number of persons is five or more than but it is not so in the case of robbery. Since, prosecution has failed to prove its case against the accused Narender and Sat Narain for hatching conspiracy, even at the time of looting of the money from the complainant they were not present at that time, as per prosecution case itself.

Only two accused namely, Sat Narain and Narender looted the money, so it amounts to be robbery on their part and they have looted the money voluntarily on the pistol point and also attempted to hurt the complainant by opening fire at the pistol. Thus, prosecution has also been able to prove its case against accused Sat Narain and Narender for the offence punishable U/s 397 of Indian Penal Code.

20. Now, it is the contention of accused counsel that neither the weapon used in the crime nor looted money has been recovered from the accused, so without effecting any recovery of the weapon or looted money accused can not be convicted U/s 392 or 397 of Indian Penal Code but I do not find any merit in this contention, because from the ingredients of the offence, as already discussed, it is no where that recovery of the weapon or the stolen property is required for proving the case. It all depends upon the Investigating Agency how or under what manner, they could succeed in effecting recovery of the weapon or the stolen property and if the Investigating Officer has not tried to effect the recovery of the stolen property or the weapon, then it is not the fault of the complainant. Complainant has extended full support to the case of the prosecution and it is in his deposition that both these accused have looted the money of Rs.40,000/- from him on the pistol point and at the time of escaping one of them fired upon him but he escaped a bit.”

Having checked the above reasons recorded by the learned trial Judge with the depositions on record, I am satisfied that there is neither any perversity nor any mistake on the part of the trial Judge in considering the evidence led by the prosecution. I,

therefore, concur with the findings recorded by the trial Judge on evidence. In the result, I find that the conviction recorded by the trial Judge is legally correct and proper and beyond any shadow of reasonable doubt.

The upshot of the above discussions is that these two appeals are required to be dismissed. In the result, I make the following order in all these four appeals:-

ORDER

- [i] Crl. Appeals No.1127-SB and 1133-SB of 2005 are dismissed.
- [ii] Conviction of the appellants Narender, Sat Narain and Naresh for offence under Section 397 IPC is confirmed.
- [iii] Conviction of appellant Narender under Section 25 of the Arms Act is confirmed.
- [iv] Crl. Appeals No.901-SB of 2005 and 2254-SB of 2008 filed by Narender and Sat Narain respectively are dismissed.
- [v] Conviction of appellants Narender and Sat Narain arising out of FIR No.61 (Sessions case No.124 of 2003) for offence under Section 397 IPC and sentence of 7 years awarded to Narender and Sat Narain is confirmed.
- [vi] However, the sentence of 7 years awarded to Narender and Santu @ Sat Narain in Sessions case No.124 of 2003) arising out of FIR No.61 is ordered to run concurrently with the sentence of 10 years awarded for

offence under Section 398 IPC arising out of FIR No.114  
(Sessions Case No.23 of 2004).

[vii] The order shall be carried out accordingly.

May 20, 2016.  
*kadyan*

**[ A.B. Chaudhari ]**  
**Judge**